IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

Crl.Rev.Pet.No. 2545 of 2007()

CRA.1252/2004 of I DISTRICT AND SESSIONS JUDGE, ERNAKULAM
CC.1781/2000 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM

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REVN. PETITIONER: PETITIONER/APPELLANT/ACCUSED

S.BIJOY, S/O. SREEDHARAN, AGED 37 YRS,
PROPRIETOR, BIJOY ENGINEERING CONTRACTORS,
41/3550, OLD RAILWAY STATION ROAD, KOCHI-18.

BY ADV. SRI.C.ANILKUMAR (KALLESSERIL)

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE

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1. SANTHOSH CHEENIYIL, AGED 35, S/O.
SANKARAN NAIR, CHEENIYIL HOUSE, CUSTOMS COLONY,
SOUTH JANATHA ROAD, PALARIVATTOM, KOCHI-25, REP.
BY HIS P/A HOLDER G.RAGHUVARAN, S/O. GOPALAKRISHNA
IYER, AGED 67 YEARS, 39/2134, RAMA IYER COLONY,
SADANAM ROAD, KOCHI-16.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR FOR R2
SRI.R.LAKSHMI NARAYAN
ADV. SMT.R.RANJINI FOR R1

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 02/07/2007, THE COURT ON 5-7-2007 PASSED THE FOLLOWING:

V.RAMKUMAR,J.

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CRL.R.P. No. 2545 OF 2007

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Dated, this the 5th day of July 2007

O R D E R

The revision petitioner who is the accused in C.C.1781 of 2000 on the file of the J.F.C.M.-II, Ernakulam, challenges the conviction entered and the sentence passed against him by the court below concurrently for an offence punishable under Sec. 138 of the N.I. Act, 1881.

2. The case of the first respondent/complainant was that the revision borrowed an amount of Rs. 5,95,950/- from the first respondent and issued Ext.P1 cheque dated 1-8-2000 for the said amount and on presentation of the cheque before the drawee bank it was dishonoured and the revision petitioner did not pay the amount even after receipt of statutory notice issued to him.

3. The revision petitioner resisted the prosecution contending inter alia as follows:-

Ext.P1 cheque was not issued in discharge of a legally enforceable debt, that Ext.P1 cheque was issued towards a time barred debt for which no prosecution would lie under Sec. 138 of the Negotiable Instruments Act, 1881, that P.W.1 who was only a power-of-attorney holder of the complainant was not competent to depose for and on behalf of the complainant and that the admission by P.W.1 that three cheques were subsequently issued and P.W.1 had encashed one of those cheques for Rs. 1,00,000/- would probabilise the defence that the amount covered by Ext.P1 cheque was discharged and this coupled with Ext.P4 notice wherein there was only an omnibus demand would falsify the complainant's case.

3. I am afraid that I cannot agree with the above submissions. In Ext.P6 reply notice, the accused had admitted the borrowal of 5,95, 950/- and the drawing of Ext.P1 cheque. It is true that accused had issued three cheques subsequently. But one cheque for Rs. 1 lakh was towards interest and that was withdrawn by the complainant. With regard to the other two cheques, the accused countermanded payment by the bank. If so, it cannot be

said that the liability under Ext.P1 cheque was discharged. Moreover, if as a matter of fact, the accused had discharged the liability under Ext.P1, then as a reasonable and prudent man he should have got the cheque back. It is pertinent to note that the amount covered by Ext.P1 cheque is not a small amount but a large amount of more than 5 lakhs of rupees. The courts below were not inclined to accept the defence set up by the revision petitioner. The conclusions reached by the courts below are on the basis of the oral and documentary evidence and this court sitting in revision cannot re-appreciate the evidence and come to a different conclusion which is not possible also. The conviction was rightly entered against the petitioner.

4. What now survives for consideration is the adequacy of the question of sentence imposed on the revision petitioner. I do not think that the revision petitioner deserves penal serviture by way of incarceration. Accordingly, if the revision petitioner pays to the first respondent/complainant a sum of Rs. 6,00,000/- (Rupees six lakhs only as compensation under Section 357 (3) Cr.P.C. wthin

three months from today, he need only undergo imprisonment till rising of court. If he does not pay the amount as aforesaid, he shall suffer simple imprisonment for six months by way of default sentence. Amounts if any, deposited by the revision petitioner pursuant to orders if any, passed by the lower appellate court shall be refunded to him.

V. Ramkumar, Judge.

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